

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Samuel Ross	Team: Squad #08	CCRB Case #: 202105539	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input checked="" type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 08/25/2021 1:17 PM, Wednesday, 08/25/2021 2:09 PM, Monday, 01/24/2022 10:38 AM	Location of Incident: § 87(2)(b) § 87(2)(b)	Precinct: 50	18 Mo. SOL 2/25/2023	EO SOL 2/25/2023	
Date/Time CV Reported Thu, 09/16/2021 10:33 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 09/16/2021 10:33 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. PO Karina Hiciano	24960	969790	050 PCT
2. PO Glenn Bysterbusch	17683	932391	050 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Desiree Bonaparte	01848	970422	050 PCT
2. PO Rosemarie Saez	13977	948880	050 PCT

Officer(s)	Allegation	Investigator Recommendation
A. PO Glenn Bysterbusch	Abuse: At 1:17 PM on August 25, 2021, Police Officer Glenn Bysterbusch entered § 87(2)(b) bedroom at § 87(2)(b) § 87(2)(b) in the Bronx.	§ 87(2)(b)
B. PO Glenn Bysterbusch	Abuse: At 2:09 PM on August 25, 2021, Police Officer Glenn Bysterbusch entered § 87(2)(b) § 87(2)(b) in the Bronx.	§ 87(2)(b)
C. PO Karina Hiciano	Abuse: At 2:09 PM on August 25, 2021, Police Officer Karina Hiciano entered § 87(2)(b) § 87(2)(b) in the Bronx.	§ 87(2)(b)
D. PO Glenn Bysterbusch	Abuse: At 2:09 PM on August 25, 2021, Police Officer Glenn Bysterbusch forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(b)
E. PO Glenn Bysterbusch	Force: At 2:09 PM on August 25, 2021, Police Officer Glenn Bysterbusch hit § 87(2)(b) against an object.	§ 87(2)(b)
F. PO Glenn Bysterbusch	Abuse: At 2:09 PM on August 25, 2021, Police Officer Glenn Bysterbusch entered § 87(2)(b) bedroom at § 87(2)(b) § 87(2)(b) in the Bronx.	§ 87(2)(b)
G. PO Glenn Bysterbusch	Abuse: At 2:09 PM on August 25, 2021, Police Officer Glenn Bysterbusch searched § 87(2)(b) bedroom at § 87(2)(b) § 87(2)(b) in the Bronx.	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
H.PO Glenn Bysterbusch	Abuse: At 2:09 PM on August 25, 2021, Police Officer Glenn Bysterbusch damaged § 87(2)(b) property.	
I.PO Glenn Bysterbusch	Untruthful Stmt.: On January 24, 2022, at 100 Church Street in Manhattan, Police Officer Glenn Bysterbusch provided a false official statement to the CCRB.	

## Case Summary

§ 87(2)(b) filed this complaint via the CCRB's Call Processing System on September 16, 2021.

On August 25, 2021, § 87(2)(b) called 911 several times to make complaints against her roommate, § 87(2)(b) who was subletting a bedroom to § 87(2)(b). They shared apartment § 87(2)(b) at § 87(2)(b) in the Bronx.

Initially, at 12:17 PM, PO Rosemarie Saez and PO Desiree Bonaparte of the 50<sup>th</sup> Precinct responded to the report of a dispute. The officers spoke with § 87(2)(b) and § 87(2)(b) determined that the dispute constituted a civil matter, and departed.

PO Glenn Bysterbusch and PO Karina Hiciano of the 50<sup>th</sup> Precinct then responded to a second call, at 1:17 PM, relayed to the officers both as a dispute and as an assault. PO Bysterbusch and PO Hiciano entered § 87(2)(b) apartment with her permission. § 87(2)(b) was no longer present. After speaking with § 87(2)(b) PO Bysterbusch entered § 87(2)(b) bedroom (**Allegation A: Abuse of Authority**, § 87(2)(g)). PO Bysterbusch and PO Hiciano then departed without taking any further action.

At approximately 2:09 PM, PO Bysterbusch and PO Hiciano again responded to § 87(2)(b) home. PO Bysterbusch and PO Hiciano entered the apartment without § 87(2)(b) permission (**Allegations B and C: Abuse of Authority**, § 87(2)(g)). PO Bysterbusch then directed that § 87(2)(b) be involuntarily removed to a hospital for psychiatric evaluation (**Allegation D: Abuse of Authority**, § 87(2)(g)). PO Bysterbusch allegedly intentionally closed the apartment door on § 87(2)(b) foot (**Allegation E: Force**, § 87(2)(g)). PO Bysterbusch entered and searched § 87(2)(b) bedroom (**Allegations F and G: Abuse of Authority**, § 87(2)(g)). Finally, PO Bysterbusch removed a shoelace from a shoe belonging to § 87(2)(b) used the shoelace to secure the apartment door, and then severed the shoelace with a knife (**Allegation H: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) was transported to a hospital. She was not arrested and did not receive any summons.

On January 24, 2022, PO Bysterbusch provided a false official statement to the CCRB (**Allegation I: Untruthful Statement**, § 87(2)(g)).

The investigation obtained BWC videos recorded by PO Saez, PO Bonaparte, PO Bysterbusch, and PO Hiciano (Board Review 01).

## Findings and Recommendations

**Allegation (A) Abuse of Authority: At 1:17 PM on August 25, 2021, Police Officer Glenn Bysterbusch entered § 87(2)(b) bedroom at § 87(2)(b) § 87(2)(b) in the Bronx.**

§ 87(2)(b) stated that PO Saez and PO Bonaparte responded to her first call for police assistance but departed without taking any action. After PO Saez and PO Bonaparte departed, § 87(2)(b) and § 87(2)(b) argued, and § 87(2)(b) took hold of her arm. § 87(2)(b) said that she was going to call the police, at which time § 87(2)(b) departed. § 87(2)(b) asked a neighbor to call for police assistance on her behalf. § 87(2)(b) then returned to her apartment. She did not hear the neighbor call 911.

PO Bysterbusch and PO Hiciano responded. § 87(2)(b) explained to them that she needed help to obtain a lock for her bedroom. She did not remember if she described § 87(2)(b) taking hold of her arm. § 87(2)(b) felt that during this conversation, the officers minimized her complaints against § 87(2)(b). PO Bysterbusch and PO Hiciano then departed.

§ 87(2)(b) described meeting with the officers at her apartment door. PO Bysterbusch's first BWC video reveals that § 87(2)(b) allowed the officers into her apartment (Board Review 01; 2 minutes 30 seconds), asked PO Hiciano to enter the apartment (3 minutes 4 seconds), and asked the officers to join her in her living room (5 minutes 9 seconds). The same video also reveals that § 87(2)(b) informed PO Bysterbusch that she rented a room from § 87(2)(b) (3 minutes 47 seconds).

§ 87(2)(b) did not describe PO Bysterbusch entering any bedroom. However, PO Bysterbusch's first BWC video reveals that he entered § 87(2)(b) bedroom without the consent of § 87(2)(b) or § 87(2)(b) (5 minutes 30 seconds).

An Event report (Board Review 02) and an NYPD Resource Recap Log (Board Review 03) reveal that the 911 call in question was relayed to officers both as a 10-52D1 (dispute) and as a 10-34Q1 (assault in progress). NYPD communications audio recordings reveal that § 87(2)(b) contacted a Life Protect operator via an alarm necklace, and that this operator called 911 on her behalf (Board Review 04 for audio files; Board Review 05 for summaries). The Life Protect operator reported to a 911 operator that § 87(2)(b) was at home with § 87(2)(b) who "put his hands on her" and was threatening to harm her. The Life Protect operator also relayed that § 87(2)(b) had no injury and that no ambulance was needed. Radio communications audio reveals that this job was relayed to PO Bysterbusch and PO Hiciano as a 10-34Q1 (assault in progress) involving no weapons and unknown injuries.

PO Bysterbusch stated that when he first met with § 87(2)(b) she said, "He laid his hands on me," alleging she was the victim of an assault. However, PO Bysterbusch did not remember if she ever confirmed her allegations, clarified what had taken place, or specified who "laid hands" on her. PO Bysterbusch then performed a "quick sweep" of the apartment to make sure no perpetrator was present. There was no other reason he performed this sweep. PO Bysterbusch did not remember if § 87(2)(b) ever said whether a perpetrator was present. When asked during his CCRB interview if he believed that a perpetrator was present, PO Bysterbusch replied that such a sweep is "procedure." PO Bysterbusch looked "room-to-room" and found that no one else was present. He did not remember if he opened the door to a room which § 87(2)(b) identified as her roommate's bedroom, or which he knew was not § 87(2)(b). PO Bysterbusch looked within a bedroom, but he did not remember whose bedroom it was.

As noted above, PO Bysterbusch's BWC video reveals that he entered § 87(2)(b) bedroom (Board Review 01; 5 minutes 30 seconds). In the video, at 2 minutes 30 seconds, PO Bysterbusch asks § 87(2)(b) "Who supposedly hit you?" § 87(2)(b) answers that § 87(2)(b) her landlord, put his hands on her, but that he did not hit her. PO Bysterbusch then speaks on the phone, apparently with PO Saez or PO Bonaparte. At 5 minutes 24 seconds, PO Bysterbusch asks again for § 87(2)(b) name, which § 87(2)(b) provides. PO Bysterbusch then says, "Show me his room, if you can." § 87(2)(b) replies, "I cannot go into his room. I do not go into his room." PO Bysterbusch asks, "Is it locked?" to which § 87(2)(b) replies, "I don't know." PO Bysterbusch asks, "Which room is his?" and § 87(2)(b) says, "The one to the left." At the same time, PO Hiciano is audible saying, "He's not here." PO Bysterbusch identifies a closed door and asks, "This one here?" § 87(2)(b) replies, "That's his room." At 5 minutes 44 seconds, PO Bysterbusch opens the door to § 87(2)(b) bedroom, reaches inside, and turns on

a light. He visually inspects the room, turns the light off, and closes the door.

PO Bysterbusch reviewed this portion of video during his CCRB interview. He stated that he had no independent recollection of opening § 87(2)(b) bedroom door. He believed, upon reviewing the video, that he was conducting a sweep for a possible perpetrator. There was no other reason he looked inside § 87(2)(b) bedroom.

As established in *Payton v. New York*, 445 U.S. 573 (1980) (Board Review 06), officers without an arrest warrant may not enter an individual's home in order to make an arrest.

§ 87(2)(b) allowed the officers into her apartment but informed them that she was a subletter and did not have authority over § 87(2)(b) bedroom. She also clearly identified the bedroom in question as § 87(2)(b) before PO Bysterbusch entered. Although the job was relayed as an assault in progress, the officers' conversation with § 87(2)(b) near the apartment door established that there was no emergency or exigency at hand. Further, the officers were armed with neither a search warrant nor an arrest warrant. Additionally, there was no indication that § 87(2)(b) was present in the apartment. In fact, before PO Bysterbusch entered the bedroom, PO Hiciano informed him that § 87(2)(b) was not at home. PO Bysterbusch, for his part, acknowledged that he had no reason to enter § 87(2)(b) bedroom other than to check for a possible perpetrator. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (B) Abuse of Authority: At 2:09 PM on August 25, 2021, Police Officer Glenn Bysterbusch entered § 87(2)(b) § 87(2)(b) in the Bronx.**

**Allegation (C) Abuse of Authority: At 2:09 PM on August 25, 2021, Police Officer Karina Hiciano entered § 87(2)(b) § 87(2)(b) in the Bronx.**

It is undisputed that PO Bysterbusch and PO Hiciano entered § 87(2)(b) apartment when they responded a second time.

§ 87(2)(b) stated that after PO Bysterbusch and PO Hiciano departed, she wished to speak with a sergeant because she felt that the officers had minimized her complaints. She activated her Life Protect necklace alarm and was connected with an operator, whom she asked to call the police on her behalf and request that a sergeant respond. § 87(2)(b) did not hear the operator call for police assistance. When § 87(2)(b) heard a knock at the door, she expected a sergeant and opened the door wide, in a welcoming manner. Instead, she again encountered PO Bysterbusch and PO Hiciano. PO Bysterbusch immediately stepped into the apartment, without § 87(2)(b) permission.

PO Bysterbusch stated that after resuming patrol, he and PO Hiciano received another job at the same location. He did not remember what information was provided via radio or what sort of job it was. Upon entering § 87(2)(b) building a second time, PO Bysterbusch encountered an EMT in the hallway outside of the apartment. Another EMT was inside of the apartment. PO Bysterbusch did not remember why EMS was on scene at this time and did not know who had called EMS. PO Bysterbusch then entered the apartment. He did not remember where § 87(2)(b) was when he entered. He did not remember if he could see her before he entered the apartment.

An Event report pertaining to this 911 call (Board Review 07) and an audio recording of the call (Board Review 04) reveal that a Life Alert operator reported that § 87(2)(b) felt anxious and needed medical help. She stated that someone had attempted to break into her apartment, and she



feared they might return. She wanted EMS in addition to police response. She felt panicked but did not specify any other medical concern. An NYPD radio communications audio recording reveals that the job was relayed to PO Bysterbusch and PO Hiciano as both a 10-54 "EDP" and as a 10-52 dispute (Board Review 04 for audio; Board Review 05 for summary).

As noted above, PO Bysterbusch's first BWC video reveals that when PO Bysterbusch and PO Hiciano first responded, § 87(2)(b) allowed them into her apartment (Board Review 01; 2 minutes 30 seconds), asked PO Hiciano to enter the apartment (3 minutes 4 seconds), and asked the officers to join her in her living room (5 minutes 9 seconds).

PO Bysterbusch's second BWC video reveals that when PO Bysterbusch and PO Hiciano arrived on scene for the second time, § 87(2)(b) apartment door was open, an EMT was inside, and § 87(2)(b) was not visible from a position outside of the apartment (Board Review 01; 2 minutes 15 seconds). PO Bysterbusch and PO Hiciano then entered the apartment. § 87(2)(b) did not open the door and encounter the officers at her doorway as she described.

According to the ruling in *People v. Long*, 124 A.D.2d 1016 (1986), in absence of a warrant or exigent circumstances, officers may enter a home only with an occupant's consent. Additionally, where there are no threats or coercive behavior by the police, and a civilian's cooperative behavior is evidence of voluntary consent, officers may make lawful entry into a home. In absence of specific words of consent, a civilian's consent can be inferred from their conduct, i.e., words, deeds and gestures in admitting police officers into a private dwelling (Board Review 08).

Additionally, per the ruling in *People v. Doll*, 21 N.Y.3d 665 (2013), which articulates the "emergency doctrine," officers may make warrantless entry where 1) the police have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property, 2) the search is not primarily motivated by intent to arrest and seize evidence, and 3) there exists some reasonable basis to associate the emergency with the area or place to be entered and/or searched (Board Review 09).

§ 87(2)(b) had admitted PO Bysterbusch and PO Hiciano into her apartment approximately one hour prior, during their first response. Additionally, upon this second response, there was the possibility of an emergency due to the nature of the most recent 911 call – the Event notes § 87(2)(b) allegation that someone had attempted to break into her apartment, and that she feared they might return. The apartment door was already open and an EMT was inside with § 87(2)(b). Lastly, the officers could not see § 87(2)(b) from outside of apartment. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation (D) Abuse of Authority: At 2:09 PM on August 25, 2021, Police Officer Glenn Bysterbusch forcibly removed § 87(2)(b) to the hospital.**

**Allegation (F) Abuse of Authority: At 2:09 PM on August 25, 2021, Police Officer Glenn Bysterbusch entered § 87(2)(b) bedroom at § 87(2)(b) § 87(2)(b) in the Bronx.**

**Allegation (G) Abuse of Authority: At 2:09 PM on August 25, 2021, Police Officer Glenn Bysterbusch searched § 87(2)(b) bedroom at § 87(2)(b) § 87(2)(b) in the Bronx.**

**Allegation (H) Abuse of Authority: At 2:09 PM on August 25, 2021, Police Officer Glenn Bysterbusch damaged § 87(2)(b) property.**

It is undisputed that § 87(2)(b) was forcibly removed to a hospital for psychiatric evaluation. Additionally, while § 87(2)(b) did not describe PO Bysterbusch entering her bedroom or damaging her property, these actions were captured in PO Bysterbusch's second BWC video, described below (Board Review 01).

§ 87(2)(b) stated that during her first interaction with PO Bysterbusch and PO Hiciano, there was no discussion regarding § 87(2)(b) mental health or any concern about her behavior. However, when PO Bysterbusch and PO Hiciano responded a second time, PO Bysterbusch said that § 87(2)(b) had called the police too many times and that she would now have to go to a hospital, whether voluntarily or not. § 87(2)(b) had not exhibited any behavior suggesting that she was a threat to herself, to the officers, or to anyone else. She never made any threatening statement or took any threatening action. PO Bysterbusch handcuffed § 87(2)(b) and escorted her from the apartment, bringing her to an ambulance waiting outside. PO Bysterbusch released § 87(2)(b) from handcuffs as she was loaded into the ambulance. EMS then transported § 87(2)(b) against her will, to § 87(2)(b) in the Bronx.

PO Bysterbusch stated that during his first interaction with § 87(2)(b) she was "excited" and "a little confused" "about the events." She also seemed scared. When asked if, during the first interaction, PO Bysterbusch had any concern about her psychiatric condition, he said she seemed "a little confused and paranoid," and that she was "flip-flopping," meaning she was unclear about past events. PO Bysterbusch did not remember specifically what conflicting information she provided. Beyond her confusion about past events, there was no other reason at this time that PO Bysterbusch was concerned about her mental state at that time.

PO Bysterbusch explained that his understanding of the NYPD standard for establishing whether § 87(2)(b) was an "Emotionally Disturbed Person" was whether she was "a danger to herself or others." PO Bysterbusch stated that during his first interaction with § 87(2)(b) she exhibited no behavior indicating that she posed a risk of danger to herself or others.

At approximately 2:07 PM, PO Bysterbusch and PO Hiciano received via radio another job at the same location. PO Bysterbusch did not remember what information was provided or what sort of job it was. PO Bysterbusch and PO Hiciano then responded to the same location. PO Bysterbusch did not remember if he decided, before arrival on scene, that § 87(2)(b) would go to a hospital for psychiatric evaluation. He also did not remember if he knew that other officers had already responded to § 87(2)(b) home that day. He did not remember if he was concerned about police officers having to repeatedly visit § 87(2)(b) home.

PO Bysterbusch encountered an EMT in the hallway outside of the apartment. Another EMT was inside of the apartment. PO Bysterbusch did not remember why EMS was on scene at this time and did not know who had called EMS. PO Bysterbusch did not remember what he said to the § 87(2)(b) but an EMT then said that § 87(2)(b) needed to go to a hospital. PO Bysterbusch also believed § 87(2)(b) needed to visit a hospital, both because EMS made this determination and because she was confused, "out of sorts," and "flip-floppy." PO Bysterbusch did not remember if there was any medical concern regarding § 87(2)(b) or if she was needed to visit a hospital only for psychiatric evaluation. He did not remember if he ever referred to her as "EDP," whether to her, other officers, or any EMT. PO Bysterbusch maintained that § 87(2)(b) was transported to the hospital on EMS' authority.

When asked if, during his second interaction with § 87(2)(b) she exhibited any behavior indicating that she posed a risk of danger to herself or others, PO Bysterbusch responded, "As per

EMS.” PO Bysterbusch did not remember if he independently observed any behavior indicating to him that § 87(2)(b) posed a risk of danger to herself or others.

PO Bysterbusch did not remember who told § 87(2)(b) that she needed to go to a hospital. He did not remember if he said this to her. PO Bysterbusch then handcuffed her, “per NYPD procedure.” § 87(2)(b) was noncompliant and refused to go to a hospital, but PO Bysterbusch and PO Hiciano brought § 87(2)(b) outside to ambulance. She was then released from handcuffs and escorted to a hospital.

PO Bysterbusch’s BWC videos clarifies what took place (Board Review 01).

PO Bysterbusch’s first BWC video does not show § 87(2)(b) ever engaging in any behavior which would indicate that she posed any risk to herself or others. The video shows that between 4 minutes 10 seconds and 4 minutes 49 seconds, PO Bysterbusch spoke via telephone with one of the officers who responded earlier to § 87(2)(b) home. Finally, the video shows, at 8 minutes 5 seconds, that PO Bysterbusch said to PO Hiciano, “They” – other officers – “were just there. They spoke to the landlord. The landlord wants her out. He doesn't live there. There's nobody in that room. I looked in the room. She's an EDP.” At 8 minutes 30 seconds, PO Bysterbusch says, “She just keeps calling. If she calls back again, we're going to EDP her. Because this – we can't come here 15 times a day for an assault that never happened.”

PO Bysterbusch’s second BWC video reveals, at 60 seconds, that upon arriving outside of § 87(2)(b) home for a second time – before entering the building – he said, “This lady's going, now. I'm not playing any more games with her. That's it. I've had enough.... call us every three minutes for something.” At 2 minutes 18 seconds, PO Bysterbusch encounters an EMT exiting § 87(2)(b) apartment, and says to the EMT, “We've been here four times today. She's an EDP. She's going.” At 2 minutes 57 seconds, after entering § 87(2)(b) apartment (addressed above in the analysis of Allegations B and C), PO Bysterbusch says to her, “How many times are we going to come back here in one day?” He then says, at 3 minutes 9 seconds, “Here's what you're going to do. You're going to go with these guys. We're taking you to the hospital.” § 87(2)(b) replies, “No, you're not,” and then, “I am not leaving with them.” PO Bysterbusch says, “We've been here four times today. The fourth time is a charm. You're going to the hospital with them - either voluntary, or we're going to take you.” § 87(2)(b) says, “I am not going.” PO Bysterbusch says, “Then we're going to take you.” At 3 minutes 30 seconds, PO Bysterbusch handcuffs § 87(2)(b) and says, “I am not coming back here again.” At 3 minutes 45 seconds, PO Bysterbusch explains to an EMT, “We've been here four times. Every time, it's a different story. It's all false. There's no guy trying to throw her out. There's none of this stuff. She's - it's just a mess. We've wasted hours here. We got two cars running. I can't keep coming back here every three minutes.”

PO Bysterbusch reviewed these portions of video during his CCRB interview (also addressed below in the analysis of Allegation H). He did not remember making any of these statements. He did not remember saying that if § 87(2)(b) called again, she would be “EDP[ed],” and he did not remember why he said that. He did not know what he meant by, “This lady's going, now. I'm not playing any more games with her. That's it. I've had enough.... call us every three minutes for something.” He did not remember approaching an EMT and stating that § 87(2)(b) was an “EDP.” He did not remember telling § 87(2)(b) that she needed to visit a hospital because officers had visited that location multiple times that day. The video did not refresh PO Bysterbusch’s recollection as to whether he decided that § 87(2)(b) needed to go to a hospital.

When asked if this portion of video refreshed his recollection as to the reasons that § 87(2)(b)



needed to visit a hospital, PO Bysterbusch answered that § 87(2)(b) made inconsistent statements, was incoherent, “flip-flopped,” and seemed paranoid. The video did not remind PO Bysterbusch of any other reason § 87(2)(b) was transported to a hospital. § 87(2)(b) incoherence and paranoia led PO Bysterbusch to believe that she might pose a risk of danger to herself. When asked how she might pose a risk of a danger to herself, PO Bysterbusch stated only that she would be safer at a hospital. There was no other specific concern as to how she posed a danger to herself.

As noted above, PO Bysterbusch’s BWC video also shows him entering and searching within § 87(2)(b) bedroom and then damaging her property (Board Review 01).

In the video, at 4 minutes 10 seconds, after PO Bysterbusch handcuffs § 87(2)(b) he asks how she locks the apartment door. § 87(2)(b) answers that she uses keys. § 87(2)(b) offers to locate them, but PO Bysterbusch says that she cannot and asks where they are. § 87(2)(b) says that she does not know, and PO Bysterbusch says, “We’ll find them.” PO Bysterbusch closes the apartment door, leaving § 87(2)(b) in the hallway. At 4 minutes 50 seconds, PO Bysterbusch enters § 87(2)(b) bedroom. Between 5 minutes 10 seconds and 5 minutes 20 seconds, PO Bysterbusch appears to search through a handbag he finds on the bed, before handing the bag to an EMT. PO Bysterbusch then exits the bedroom, saying, “I do not know where these keys are.”

In the same video, at 6 minutes 35 seconds, PO Bysterbusch reenters § 87(2)(b) bedroom and picks up a boot he finds there. He removes a shoelace from the boot and then, at 8 minutes, appears to use a knife to cut the shoelace. Between 8 minutes 15 seconds minutes and 9 minutes 7 seconds, PO Bysterbusch wraps the shoelace around a part of the deadbolt on the inside of the apartment door, closes the door, and pulls on the shoelace to pull the lock closed from the outside. At 9 minutes 10 seconds, he uses a knife to sever the shoelace.

PO Bysterbusch stated that he had to secure the apartment door before departing because no one else was home. He did not remember if § 87(2)(b) had keys to lock the apartment door and did not remember if she was asked about keys. She never offered to find the keys to lock the apartment door. PO Bysterbusch went into her bedroom to look for keys to lock the apartment door. He had no other purpose in entering her bedroom. He did not remember where in her room he looked for keys. He had no search warrant for the location and there was no emergency in the apartment at that time. PO Bysterbusch also did not ask for consent to enter the bedroom and search for the keys. Ultimately, he was unable to locate her keys.

PO Bysterbusch stated initially that he took a shoelace from the apartment but that he did not remember where in apartment he found the shoelace. He then recanted and stated that he did not know whose shoelace it was – whether his own property, department property, or § 87(2)(b). He wrapped the shoelace around the twisting handle of the lock, closed door, and pulled the lace, which pulled the deadbolt closed. He did so because he was responsible for securing the apartment door. PO Bysterbusch also did not remember if he severed the shoelace. PO Bysterbusch stated initially that he did not remember if he asked § 87(2)(b) for permission to use her shoelace for this purpose. However, he also stated that he never discussed with § 87(2)(b) whether he could or would damage any of her property, such as a shoelace.

PO Bysterbusch reviewed the above-cited portions of video during his CCRB interview. PO Bysterbusch explained that he declined to allow § 87(2)(b) to find her own keys because she was in custody and could not be permitted to “roam around” her apartment. There was no other reason she could not retrieve her keys. In response to the portion of video showing the cutting of the shoelace, PO Bysterbusch stated that he did not remember picking up a boot in § 87(2)(b).

bedroom or severing the shoelace with a knife. Upon reviewing the video, he also stated that the shoelace needed to be cut so that no one could unlock the apartment door from the outside, which he believed might be possible.

As noted above, an Event report pertaining to this final police response reveals that it was classified as a 10-54E1 – an “EDP” job (Board Review 07). An audio recording of the pertinent radio communications (Board Review 04 for audio; Board Review 05 for summary) reveals, at 48 minutes 10 seconds, that PO Bysterbusch (Unit 50B) requested an ambulance (“bus”) at the location because, “It’s an EDP.”

The CCRB obtained the FDNY Pre-Hospital Care Report Summary pertaining to § 87(2)(b) transportation to a hospital (Board Review 10; Medical). The narrative reads, “Upon arrival was met by pt, 68 year old female A&O x3 self ambulating in apartment lobby stating ‘I called for you and the police. This man is in my apartment and he is trying to throw me out and infest the apartment with roaches.’ Pt would not answer the questions that the crew asked so crew was unable to confirm or deny any medical history, medication usage, or allergies that the patient may have. NYPD 52 pct arrived on scene and deemed that the patient needed to go to the hospital for a psychiatric evaluation.”

NYPD Patrol Guide Procedure 221-13 defines an “Emotionally Disturbed Person” as a person who appears to be mentally ill or temporarily deranged and is conducting themselves in a manner which a police officer reasonably believes is likely to result in serious injury to themselves or others (Board Review 11). This procedure instructs that such individuals be removed to a hospital via ambulance, and that restraining equipment, including handcuffs, may be used if the individual is violent or resists.

As addressed above, per the ruling in *People v. Doll*, 21 N.Y.3d 665 (2013), officers may make warrantless entry where 1) the police have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property, 2) the search is not primarily motivated by intent to arrest and seize evidence, and 3) there exists some reasonable basis to associate the emergency with the area or place to be entered and/or searched (Board Review 09).

According to *People v. McBride*, 14 N.Y.3d 440 (2010), officers may make warrantless entry where exigent circumstances are present (Board Review 12). Among the factors contributing to exigency are (1) the gravity or violent nature of a criminal offense; (2) whether a suspect is reasonably believed to be armed; (3) a clear showing of probable cause to believe that a suspect committed a crime; (4) strong reason to believe that the suspect is in the premises being entered; (5) a likelihood that the suspect will escape if not swiftly apprehended; and (6) the peaceful circumstances of the entry. *McBride* also states that the police themselves cannot by their own conduct create an appearance of exigency.

Also addressed above, per the ruling in *People v. Long*, 124 A.D.2d 1016 (1986), in absence of a warrant or exigent circumstances, officers may enter a home only with an occupant’s consent (Board Review 08).

Lastly, per the ruling in *Onderdonk v. State*, 648 N.Y.S.2d 214 (1996), officers may damage property where reasonably necessary to effectuate a lawful police action (Board Review 13).

As noted, PO Bysterbusch’s first BWC reveals that during the officers’ first response, § 87(2)(b) engaged in no behavior which indicated that she posed a risk of any danger to herself or

others. The same video shows that immediately after departing from § 87(2)(b) home, PO Bysterbusch stated that if she called again for police assistance, he would “EDP” her. The second video reveals that upon arriving at § 87(2)(b) home the second time, PO Bysterbusch said immediately, “She’s going,” and, “She’s an EDP.” Contrary to PO Bysterbusch’s testimony that EMS determined § 87(2)(b) needed to visit a hospital, the BWC video and the FDNY Pre-Hospital Care Report Summary reveal that this was PO Bysterbusch’s decision. Additionally, PO Bysterbusch said to both an EMT and to § 87(2)(b) that she needed to visit a hospital because officers had responded multiple times to her 911 calls. PO Bysterbusch could not explain how § 87(2)(b) posed a risk of danger to herself or anyone else, and the videos do not support his argument that this was the case. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

PO Bysterbusch’s second BWC video reveals that, having decided to forcibly remove § 87(2)(b) to a hospital, he entered and searched within her bedroom, looking for her keys. There was no emergency at hand. § 87(2)(b) had not consented to any such search. (In fact, she offered to locate the keys and was told that she could not.) Additionally, there was no exigent circumstance requiring urgent action other than the need to secure the apartment door, a need which PO Bysterbusch created via his decision to remove § 87(2)(b) to a hospital and refusal to allow her to locate her keys. Lastly, PO Bysterbusch was not in possession of a search warrant. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

PO Bysterbusch damaged § 87(2)(b) shoelace in order to secure the apartment door, § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation (E) Force: At 2:09 PM on August 25, 2021, Police Officer Glenn Bysterbusch hit § 87(2)(b) against an object.**

§ 87(2)(b) stated that as she exited the apartment, she placed her left foot in front of the apartment door to prevent PO Bysterbusch from closing it. She believed that PO Bysterbusch saw her foot in the door’s path. Nonetheless, PO Bysterbusch swung the door hard against her foot, causing pain to § 87(2)(b) left big toe. In response, she screamed in pain.

PO Bysterbusch stated that he did not see if the apartment door came into contact with § 87(2)(b) foot when he closed it. However, he confirmed that § 87(2)(b) complained that the door struck her foot. PO Bysterbusch maintained that he did not intentionally close the door on § 87(2)(b) foot.

PO Bysterbusch’s second BWC video captured this portion of the interaction (Board Review 01). Between 4 minutes 20 seconds and 4 minutes 35 seconds, the video shows PO Bysterbusch attempting to close the apartment door. The video does not show the position of § 87(2)(b) foot as he does so. The apartment door fails to close fully, and § 87(2)(b) screams loudly. PO Bysterbusch opens the door, guides § 87(2)(b) from the doorway, and then closes the door.

PO Bysterbusch reviewed this portion of video during his CCRB interview. He did not remember if the door closed on § 87(2)(b) foot at this time. He did not remember moving § 87(2)(b) from the doorway and did not remember why he did so. In response to this video, he again denied intentionally closing the door on § 87(2)(b) foot.

Although the video does not show the position of § 87(2)(b) foot as PO Bysterbusch closed the door, it did capture the door's failure to close, § 87(2)(b) scream, and PO Bysterbusch guiding § 87(2)(b) away from the door before closing it again. Together, these facts corroborate § 87(2)(b) statement that the door closed on her foot. However, § 87(2)(b) stated that she intentionally placed her foot in the door's path to prevent it from closing. Further, the video reveals that PO Bysterbusch may not have seen § 87(2)(b) moving toward the doorway or extending her foot into the door's path as he closed it, as § 87(2)(b) was at least partly obscured by the door. PO Bysterbusch, for his part, denied intentionally closing the door on § 87(2)(b) foot. § 87(2)(g)

**Allegation (I) Untruthful Statement: On January 24, 2022, at 100 Church Street in Manhattan, Police Officer Glenn Bysterbusch provided a false official statement to the CCRB.**

PO Bysterbusch provided testimony regarding this incident at the CCRB on January 24, 2022 (Board Review 14). He stated that he had reviewed his BWC videos on the morning of his CCRB interview.

As addressed above, PO Bysterbusch stated that when he responded to § 87(2)(b) home for the second time, an EMT informed him that § 87(2)(b) needed to go to a hospital. When asked if, during his second interaction with § 87(2)(b) she exhibited any behavior indicating that she posed a risk of danger to herself or others, PO Bysterbusch responded, "As per EMS."

As addressed above in the analysis of Allegation D, PO Bysterbusch's BWC videos (Board Review 01) demonstrate that he had § 87(2)(b) removed to a hospital because he grew impatient with her repeated calls for police assistance.

PO Bysterbusch's first BWC video shows, at 8 minutes 5 seconds, that PO Bysterbusch said to PO Hiciano, "They" – other officers – "were just there. They spoke to the landlord. The landlord wants her out. He doesn't live there. There's nobody in that room. I looked in the room. She's an EDP." At 8 minutes 30 seconds, PO Bysterbusch says, "She just keeps calling. If she calls back again, we're going to EDP her. Because this – we can't come here 15 times a day for an assault that never happened."

Further, PO Bysterbusch's second BWC video reveals, at 60 seconds, that upon arriving outside of § 87(2)(b) home for a second time – before entering the building – he said, "This lady's going, now. I'm not playing any more games with her. That's it. I've had enough.... call us every three minutes for something." At 2 minutes 18 seconds, PO Bysterbusch encounters an EMT exiting § 87(2)(b) apartment, and says to the EMT, "We've been here four times today. She's an EDP. She's going." At 2 minutes 57 seconds, PO Bysterbusch says to her, "How many times are we going to come back here in one day?" He then says, at 3 minutes 9 seconds, "Here's what you're going to do. You're going to go with these guys. We're taking you to the hospital." § 87(2)(b) replies, "No, you're not," and then, "I am not leaving with them." PO Bysterbusch says, "We've

been here four times today. The fourth time is a charm. You're going to the hospital with them – either voluntary, or we're going to take you." § 87(2)(b) says, "I am not going." PO Bysterbusch says, "Then we're going to take you." At 3 minutes 30 seconds, PO Bysterbusch handcuffs § 87(2)(b) and says, "I am not coming back here again." At 3 minutes 45 seconds, PO Bysterbusch explains to an EMT, "We've been here four times. Every time, it's a different story. It's all false. There's no guy trying to throw her out. There's none of this stuff. She's - it's just a mess. We've wasted hours here. We got two cars running. I can't keep coming back here every three minutes."

PO Bysterbusch reviewed the above-cited portions of his first BWC video during his CCRB interview. PO Bysterbusch stated that he did not remember making any of these statements. He did not remember saying that if § 87(2)(b) called again, she would be "EDP[ed]," and he did not remember why he said that. He did not know what he meant by, "This lady's going, now. I'm not playing any more games with her. That's it. I've had enough.... call us every three minutes for something."

PO Bysterbusch also reviewed the above-cited portions of his second BWC video during his CCRB interview. He stated that he did not recall saying to an EMT outside of § 87(2)(b) apartment, "We've been here four times today. She's an EDP. She's going." This portion of video also showed PO Bysterbusch stating that officers had to repeatedly respond to her home even though there were only two vehicles out on patrol. PO Bysterbusch did not recall making these statements.

PO Bysterbusch was reminded that earlier in the CCRB interview, he had said that it was EMS who determined that § 87(2)(b) had to be transported to a hospital. PO Bysterbusch did not remember approaching an EMT and stating that § 87(2)(b) was an "EDP" (47 minute 8 seconds of the interview recording).

PO Bysterbusch was also reminded that he said earlier during the CCRB interview that he had reviewed his BWC videos before the CCRB interview. When asked why he stated that EMS decided § 87(2)(b) needed to go to a hospital, whereas the video shows that he told EMS that she needed to go to a hospital, PO Bysterbusch responded, "I see that now, but I don't remember." When asked again why he testified earlier that EMS said § 87(2)(b) was going to a hospital – after having also testified that he had reviewed his BWC video, which included evidence to the contrary – PO Bysterbusch answered, "I didn't remember this portion" (48 minutes 16 seconds of the interview recording).

PO Bysterbusch's second BWC video was also played from 2 minutes 55 seconds until 3 minutes 46 seconds, which showed PO Bysterbusch telling § 87(2)(b) why she needed to visit a hospital: he said that officers had been there four times today; that § 87(2)(b) could go voluntarily or involuntarily; and that he would not come back to that location again. PO Bysterbusch stated that he did not remember whether he had reviewed this portion of video on the morning of the CCRB interview (51 minutes 38 seconds of the interview recording). He also stated that he did not recall this exchange and did not recall telling § 87(2)(b) these reasons that she needed to go to a hospital. Additionally, the video did not refresh PO Bysterbusch's recollection as to whether it was he who decided § 87(2)(b) needed to go to a hospital.

These BWC videos reveal that PO Bysterbusch had § 87(2)(b) forcibly removed to a hospital on his authority, § 87(2)(g). He testified that EMS made this decision, which would have made this removal permissible, but the BWC videos and above-cited Pre-Hospital Care Report demonstrate that that was false. Further, he stated that he had reviewed his BWC videos on the morning of his CCRB interview, but when presented with video evidence contradicting his

testimony, he denied remembering making the pertinent statements to his partner, to an EMT, and to § 87(2)(b). When reminded that he stated he had reviewed his BWC videos the same morning, PO Bysterbusch stated first that he failed to remember pertinent portions of the video and then that he did not remember which portions he had reviewed. Despite being given the opportunity, PO Bysterbusch did not retract or correct his § 87(2)(g) testimony. In fact, he claimed not to remember what he had seen in his BWC videos, which he acknowledged having reviewed that morning.

§ 87(2)(g). He failed to recant when presented with evidence of his misconduct. Further, he resorted to the claim first that he was unable to recall pertinent aspects of his BWC video – which he reported having reviewed the same morning – and then to the claim that he did not remember which portions of the BWC videos he had reviewed. § 87(2)(g)

#### Civilian and Officer CCRB Histories

- § 87(2)(b)
- PO Bysterbusch has been a member of service for 18 years and have been a subject in two other CCRB complaints with two allegations, neither of which were substantiated. § 87(2)(g)

#### Mediation, Civil, and Criminal Histories

- This complaint could not be mediated due to a COVID-related backlog of mediation cases.
- As of January 21, 2022, the New York City Office of the Comptroller had no record of a Notice of Claim being filed in regard to this incident (Board Review 16).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 8

Investigator:	Samuel Ross	SI Samuel Ross	04/06/2022
	Signature	Print Title & Name	Date

Squad Leader:	Ethan De Angelo	IM Ethan De Angelo	04/06/2022
	Signature	Print Title & Name	Date

Reviewer: \_\_\_\_\_



Signature

Print Title & Name

Date